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SOUTH DAKOTA DEPARTMENT OF LABOR
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STANLEY COUNTY SCHOOL,)	
Petitioner/Employer,)	
)	
and)	
)	
ASSOCIATED SCHOOL BOARDS OF)	PETITION FOR
SOUTH DAKOTA WORKER'S)	DECLARATORY RULING
COMPENSATION TRUST FUND)	
Petitioner/Provider,)	
)	
vs.)	
)	
ST MARY'S HEALTHCARE CENTER,)	
Respondent.)	

COME NOW Stanley County School (hereinafter "Employer") and Associated School Board of South Dakota Worker's Compensation Trust Fund, (hereinafter "Provider") (referred to collectively herein as "Employer/Provider"), as Petitioners in the above-captioned matter, by and through their attorneys of record, Tieszen Law Office, Prof. L.L.C., Richard P. Tieszen, Naomi R. Cromwell, Jessica L. Filler, and Wade L. Fischer, and pursuant to the provisions of SDCL 1-26-15 and ARSD 47:01:01:04 hereby petition the South Dakota Department of Labor and Regulation for its declaratory ruling in regard to the following:

A The state statute or Department of Labor and Regulation rules in question:

ARSD 47:03:05:10, ARSD 47:03:05:11, and ARSD 47:03:05:12.

B. The facts and circumstances which give rise to the issue to be answered by the Department's declaratory ruling are as follows.

Procedural Background.

1. St. Mary's Healthcare Center ("St. Mary's") filed a Petition for Hearing on Medical Benefits dated July 15, 2011, which was assigned HF No. 33, 2011/12. Employer/Provider timely filed its Response to Petition for Hearing on Medical Benefits dated September 8, 2011.

2. Also dated September 8, 2011, Employer/Provider filed a Motion to Consolidate, requesting that the Department consolidate and consider together HF No. 33, 2011/12, HF No. 36, 2011/12, HF No. 37, 2011/12, HF No. 38, 2011/12, HF No. 39, 2011/12, and HF No. 40, 2011/12. Respondents City of Pierre and South Dakota Risk Pool (HF No. 36, 2011/12, HF No. 37, 2011/12, HF No. 38, 2011/12, HF No. 39, 2011/12, and HF No. 40, 2011/12) also filed motions seeking consolidation of these matters in which identical issues are presented.

3. By letter dated October 20, 2011, the Department denied the various motions to consolidate. In that letter, the Department noted that each of the matters deal with the same law and similar facts, and suggested the parties seek a declaratory ruling in the matters pending.

Facts Presented.

4. St. Mary's provided services to an employee of Employer Stanley County School District who was injured in a work related incident.

5. Employer/Provider paid St Mary's for the services provided pursuant to the fee schedule set forth in ARSD 47:03:05:11, which provides that the maximum reimbursement for professional or technical services rendered by hospitals or ambulatory surgical centers are those stated in § 47:03:05:10. ARSD 47:03:05:10 in turn states that

the applicable payment “is limited to the lesser of the physician’s usual and customary charge or the amount specified in Appendix A.”

6. Each of the services for which St. Mary’s seeks additional reimbursement are services to which a CPT code has been assigned and are contained in the fee schedule set forth in Appendix A.

7. St. Mary’s claims that the fee schedule covers technical services only if they are being billed as a professional service instead of a facility service, and that under ARSD 47:03:05:01(14), ARSD 47:03:05:11, and ARSD 47:03:05:12, it should be paid for the services it provided at 80% of the usual and customary charge rather than pursuant to the fee schedule of Appendix A. St. Mary’s assertion, if accepted, would allow providers to circumvent the workers’ compensation fee schedule by simple election of the manner in which they submit billings.

8. Prior to the filing of a petition on this issue, inquiry was made to the Department as to the appropriate basis for paying for services under South Dakota’s workers’ compensation laws. The Department confirmed that if it is a CPT codable expense, it is to be paid according to the fee schedule rather than at 20% of usual and customary. If a CPT codable service is provided at a facility that is on the exempt list they are still paid at the fee schedule rather than exempted. See **Exhibit 1**, a true and correct copy of email exchange between James Marsh and Deb Whipple (November 15, 2007, 8:17 AM), attached hereto and incorporated herein by reference.

C. The precise issue to be answered by the Department’s declaratory ruling:

Whether payment for services or procedures provided at a hospital facility are to be paid according to the fee schedule set forth in Appendix A, rather than at 80% of

billed charges, when a CPT code has been assigned to that service and it is listed in the fee schedule of Appendix A, regardless of whether the provider identifies the service or procedure as a professional service or a facility service.

Employer/Provider respectfully request that briefing and a hearing be held on this Petition and that the Department issue its declaratory ruling on the issue presented herein.

Dated this 31st day of October, 2011.

TIESZEN LAW OFFICE, PROF. L.L.C.

For the Firm



Naomi R. Cromwell

306 East Capitol, Suite 300

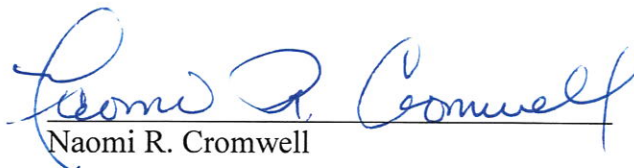
P.O. Box 550

Pierre, SD 57501-0550

Telephone: (605) 224-1500

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Petition for Declaratory Ruling in the above-captioned matter was served by first class United States mail, postage prepaid, upon Lisa Jilinski, St. Mary Healthcare, 801 E. Sioux, Pierre, SD 57501, upon Larry E. Klaahsen, First Dakota Indemnity Company, PO Box 89301, Sioux Falls, SD 57109-9310, and upon Michael S. McKnight, Boyce, Greenfield, Pashby & Welk LLP, PO Box 5015, Sioux Falls, SD 57117-5015 on this 31st day of October, 2011.



Naomi R. Cromwell

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Deb Whipple

From: James.Marsh@state.sd.us
Sent: Thursday, November 15, 2007 8:17 AM
To: Deb Whipple
Subject: RE: Fee Schedule

Follow this message to your questions, the responses were provided there. James

-----Original Message-----

From: Deb Whipple [mailto:dwhipple@rehassoc.com]
Sent: Wednesday, November 14, 2007 1:09 PM
To: Marsh, James
Cc: Regynski, Seanna
Subject: RE: Fee Schedule

Hi James and Seanna,
Did you write a response that just didn't get my direction? All I got back was a Hi Deb.
Thanks much.
Deb

-----Original Message-----

From: James.Marsh@state.sd.us [mailto:James.Marsh@state.sd.us]
Sent: Wednesday, November 14, 2007 10:07 AM
To: Deb Whipple
Cc: Seanna.Regynski@state.sd.us
Subject: RE: Fee Schedule

Hi Deb

From: Deb Whipple [mailto:dwhipple@rehassoc.com]
Sent: Mon 11/12/2007 10:32 AM
To: Marsh, James
Subject: Fee Schedule

Hi James,

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I just need to clarify a fee schedule question. Here is my understanding of two issues.
Please let me know if I am handling these correctly - Thanks.

1. CPT codable expenses (technical fee for the X-ray etc.) that take place at a facility should be paid according to the fee schedule rather than 20% discount. ~~IF WE ARE TALKING ABOUT THE SERVICE ITSELF, AND IT IS NOT BUNDLED WITH A FACILITY CHARGE, YES. THE CONFUSION COMES BECAUSE THE CPT IS USED AS AN IDENTIFIER, BUT THE CHARGE IS OFTEN A FACILITY CHARGE (IT COMES IN ON A UB FORM RATHER THAN HCFA-1500, FOR EXAMPLE.)~~

2. If a CPT codable expense takes place at a facility that is on

EXHIBIT

tabbles

1

the exempt list they are still paid at the fee schedule rather than no exemption. The No exemption is for facility fees and non-CPT codable expenses. ~~RIGHT SUBJECT TO THE~~

~~MITIGATION IN #1~~

Are the two above statements correct? Thanks for your input.

Deb Whipple

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